The Crushed Stone Industry Grows Up: A History of Mineral Material Trespass On Public Lands in Central Arizona

by W. Scott Donaldson
Mining Attorney
Phoenix, Arizona

OFR 02-18
May, 2002

Arizona Department of Mines and Mineral Resources
1502 West Washington
Phoenix, Arizona 85007
(602) 255-3795
www.admmr.state.az.us

Table of Contents

I. Introduction

The State of Arizona experienced considerable population growth throughout the last three decades. Some of the state's mineral industries kept pace with the population growth and its accompanying residential and commercial construction. Crushed stone is one such mineral product.

Crushed stone is the product resulting from the artificial crushing of rocks, boulders, or large cobblestones, substantially all faces of which have resulted from the crushing operation. The term is applied to irregular fragments of rock crushed or ground to smaller sizes after quarrying.[1] Crushed stone is a natural decorating medium, well suited for use in an arid environment. Large amounts of crushed stone are used as landscaping material in residential, commercial and public projects. Many colors and size gradations are used in diverse landscapes. It is commonplace in Arizona to see red, gold, and other colored crushed landscaping stone around homes, business and roads. Crushed stone is also widely used in the construction industry. Uses include concrete/asphalt aggregate, sub grade materials for road construction, and riprap for erosion control along drainages.

Maricopa County and the Phoenix metropolitan area encompass some of the most dramatic growth of population in the nation. The arid climate and nearby sources of mineral material make them an attractive market area for the crushed stone industry. Mineral deposits suitable for the production of crushed stone are often found on state or federal lands because the State of Arizona and the United States of America own a majority of the land in the area. A large portion of the public lands in Maricopa County is held by the United States through the Department of the Interior, Bureau of Land Management (BLM).

BLM generally considers crushed stone sources a saleable mineral, which must be purchased from BLM. Some producers focusing on the Phoenix metropolitan area have searched for ways to avoid purchasing these minerals, thus avoiding payments to the BLM. One of the more common ways is to claim that the mineral material is “locatable” instead of saleable. A locatable mineral can be removed from mining claims without payment to the United States. Successfully claiming a crushed stone source as locatable instead of saleable has been attractive to private industry.

BLM’s position that crushed stone is saleable and, in many cases, the industry's position that it is locatable were the source of considerable conflict through the 1980s and 1990s.

The early 1980s saw an increase in the number of crushed stone producers and efforts by some of those producers to assert the locatable nature of their sources. During that time, BLM proved unready to directly challenge those producers and attempted to

[1] *A Dictionary of Mining, Mineral, and Related Terms*,s.v. “crushed stone”.

negotiate settlements or simply allowed production to continue. Some of the cases rested in limbo for years. However, both private industry and BLM gained experience and sophistication until the producers accepted the saleable material classification, either voluntarily or involuntarily, or operations were halted through litigation.

The sequence of cases is representative of Maricopa County's recent economic and social history. The number of crushed stone producers blossomed in the 1980s, and most operated against the law, according to BLM. Although the industry's production has continued to grow alongside our growing population, the producers were either out of business or quietly purchasing their mineral material by the early 1990s.

Paul Buff, Senior Mineral Specialist, Arizona State Office, BLM, and participant in the cases, offered the following observations:

> "Arizona in the mid 1980s still held, for some people, the old Wild West dream of striking it rich, which began with the discovery of gold at Sutter's Mill in 1848 California. Except in modern-day Arizona the gold changed from the precious metal to construction and landscaping materials (common variety minerals), almost as, if not more, valuable on a per ton of material excavated than the rock that held the glistening metal mined in Nevada, the present gold rush state. The cast of characters seemingly remained the same -- the crusty old prospectors, claim jumpers, promoters, marshals/government agents and lawyers, both good and bad. There were a few instances, in the late 1980s and within 60 miles of the federal courthouse in Phoenix, where people were gunned down and killed over disputes of ownership of mining claims. A couple of times there were instances of dueling front-end loaders rather than six shooters. The more civil disputants took their cases to court or negotiated settlements."

The crushed stone producers who continue in business today are those who cooperated with BLM and chose not to litigate with the federal government. This article studies the lengthy conflict between BLM and the crushed stone industry in Maricopa County and the Phoenix metropolitan area that resulted in today's more stable situation.

II. Population Increase and Crushed Stone Production

The mineral trespass cases described in this article occurred in Maricopa County or sales from the producers generally went into metropolitan Phoenix, its satellite cities and other surrounding communities.

The population growth in Maricopa County and the State of Arizona is well documented. Maricopa County grew from a population of 870,000 in 1966 to 2,634,000 in 1996. Arizona grew from 1,614,000 to 4,462,300 during the same years.[2] Maricopa's percentage of the total Arizona population grew from 53% to 59% during that time. It was and is an attractive market area to any retailer, including sellers of crushed stone.

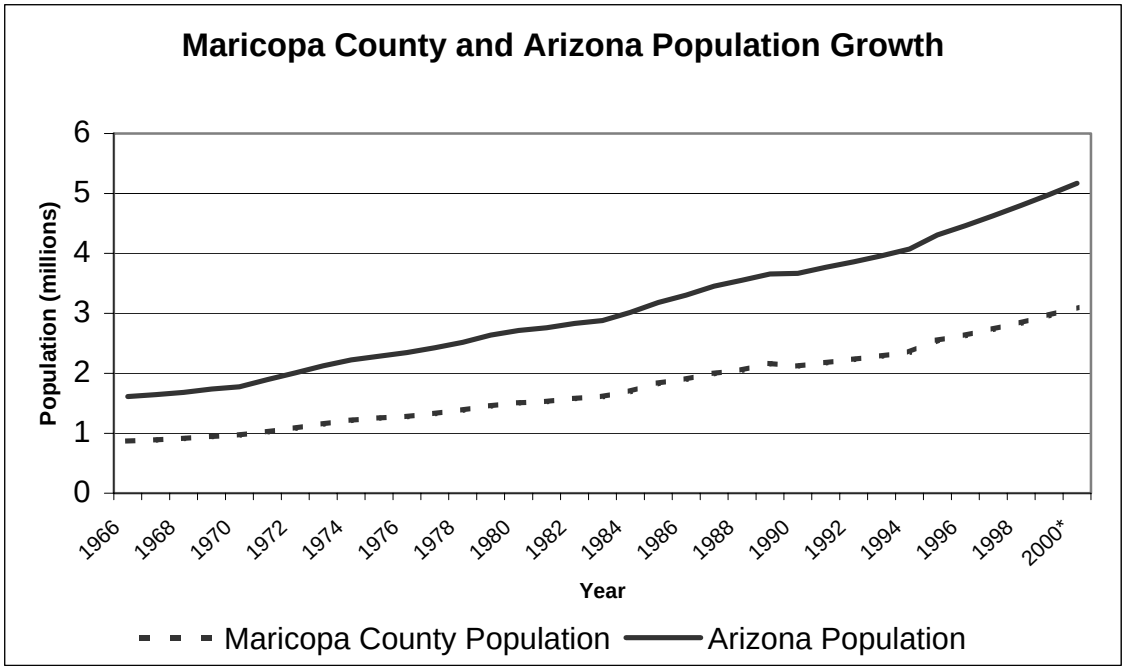
The population of Maricopa County could reach 3,329,550 people and that of the State of Arizona 5,553,825 people by 2005.[3] The county's portion of the state's population appears to be stable. It will continue to consume large quantities of crushed stone in its landscaping and building.

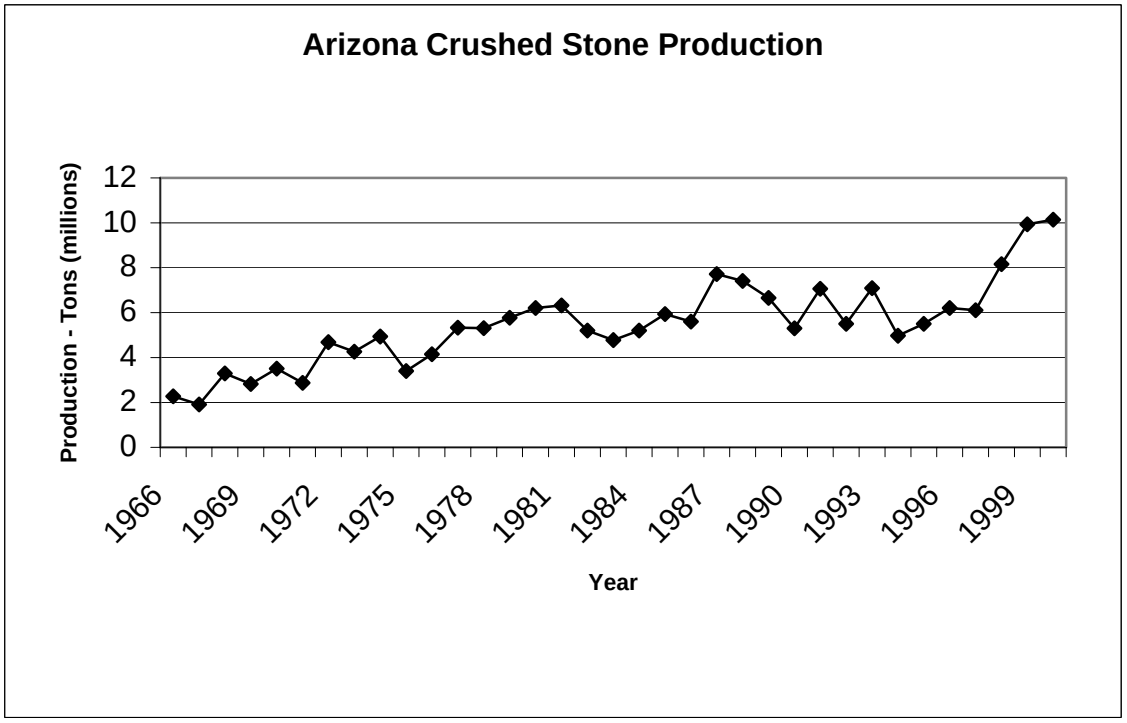
Comparing expanding population and crushed stone production shows an increasing demand for the mineral product as Arizona grew through the 1970s, 1980s and 1990s. Transportation costs were and are a major factor in crushed rock production. Maricopa County encompassed such a large portion of Arizona's growth that it was advantageous for crushed stone producers to locate their operations close to the Phoenix metropolitan area.

The number of entities attempting to produce crushed stone from sources close to the Phoenix market increased as the price per ton for crushed stone increased with the demand.[4],. In opposition to this factor, population growth increasingly put the producers in greater conflict with the market they tried to serve.

[5]

[2] *Arizona Yearbook: A Guide to Government in the Grand Canyon State 1997-1998*
[3] *Id.*
[4] Appendix B.
[5] Arizona Department of Mines and Mineral Resources





Arizona's share of crushed stone production from BLM lands throughout the United States has grown along with in-state production and the state's population. Arizona's share of stone produced from all BLM lands was 2.4% in 1990. The figure grew to 44.4% in 1997 and 15.9% in 1999.[6]

[6] *Public Land Statistics, 1999*, et al, United States Government Printing Office.

III. Maricopa County Land Ownership

Arizona's most populous county contains relatively little private land. Maricopa County's land ownership status is [7]:

U.S. Forest Service	11%
U.S. Bureau of Land Management	41%
Indian Reservation	5%
State of Arizona	11%
Individual or Corporate	31%
Other Public Lands	1%

The paucity of private land has pushed the search for sources of crushed stone onto public lands. BLM-controlled lands proved attractive to producers due to their availability and relatively low operating costs under the federal mining laws.

IV. Federal Mining Laws

Federal minerals can be acquired three different ways: (1) location of mining claim, (2) sale, and (3) lease. The locatable and saleable minerals are pertinent to this article.

Title 30, United States Code, Mineral Lands and Mining, contains the federal mining laws. Title 43, Code of Federal Regulations, Public Lands, contains the principal regulations relating to mining on federal lands.

Locatable minerals include any valuable mineral deposit which is not saleable or leasable and is locatable under the Mining Law of 1872[8], as amended. The term also includes uncommon varieties of sand, stone and other building materials. Saleable minerals include common varieties of sand, stone, gravel, clay and other mineral materials. The Mineral Materials Act of 1947[9], as amended, governs exploitation of saleable minerals on BLM and other federal lands.

The differences between locatable and saleable minerals, which are important to the crushed stone industry, are based on cost and operations. Locatable minerals can be removed from a valid mining claim without a unit payment to the government. Their removal is an entitlement, which the government cannot prevent without complex administrative or judicial proceedings. A mining claim is a grant from the United States to the claimant of exclusive right of possession but exclusive possession of the surface is limited to mining purposes.[10] BLM can only regulate surface operations so as to prevent

[7] *Arizona Yearbook: A Guide to Government in the Grand Canyon State 1997-1998.*
[8] 30 U.S.C. § 22, et seq.
[9] 30 U.S.C. § 601, et seq.
[10] U.S. v. Etcheverry, 230 F.2d 193 (9th Cir. 1956).

unnecessary and undue degradation of the lands pursuant to the Federal Land Policy and Management Act of October 21, 1976.[11]

Saleable minerals must be purchased at an appraised value from BLM. The contract terms are unwieldy[12] and issuance of the purchase contract itself is a discretionary BLM decision.[13]

The federal mining laws regarding locatable minerals state:

> "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration . . ." [14]

"Valuable mineral deposit" is defined in the Code of Federal Regulations as follows:

> "Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming with the purview of the mining laws." [15]

An entity seeking to appropriate locatable minerals locates a mining claim over the mineral body.

> "A mining claim is a parcel of land containing precious metal in its soil or rock. A location is the act of appropriating such parcel, according to certain established rules. . . ." [16]

Location procedures involves five basic steps:

> "1. discovery of a valuable mineral deposit;
> 2. posting the claim;
> 3. discovery work, if required;
> 4. marking the claim boundaries; and
> 5. recording location notice with county recorder and BLM" [17]

The term "discovery" is at the heart of the conflict between BLM and the crushed stone industry in central Arizona. Efforts to define the term stretch back over more than a century:

---

[11] 43 U.S.C. § 1701, et seq.
[12] 43 C.F.R. S 3600, et seq.
[13] 30 U.S.C. § 601.
[14] 30 U.S.C. § 22.
[15] 43 C.F.R. § 3812.1.
[16] St. Louis Smelting Company v. Kemp, 104 US 636 (1881).
[17] *2 American Law of Mining, Second Edition*, § 33.02[1], p. 33-12.

> "Two rules form the core of the law of discovery. The prudent man rule provides that when the evidence of mineralization is such that 'a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine' a discovery has been made. The marketability rule requires that a mineral deposit be of such value that, given its accessibility, the costs of its development, its proximity to a market, and the demand for the mineral, the deposit can be mined and sold at a profit."[18]

The history of locatable minerals and saleable minerals is intertwined. Prior to passage of the Materials Act[19] deposits of common sand, stone, gravel and clay were unavailable under any system. Uncommon deposits were locatable. After the Materials Act, those common materials could be purchased. Certain types of ordinary material, even with commercial value, have never been locatable under the mining laws, including fill, sub-base, ballast, riprap and barrow.[20]

On July 23, 1955, an amendment to the Materials Act was passed known as the Common Varieties Act[21]. The Common Varieties Act codified the prior law that common varieties of certain building materials are not locatable and provided an exception for "uncommon varieties":

> "No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws. . . .
>
> "'Common varieties' as used in sections 601, 603, and 611 to 615 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value." . . .

The uncommon varieties reference in the Common Varieties Act and the effective date of that statute form the heart of the BLM – crushed stone industry cases described herein. Generally the producer was seeking a way to categorize minerals as locatable rather than saleable. The advantages of the classification are discussed above. If the mining claim pre-dated the Common Varieties Act, the producer could argue that the minerals were locatable at the time of location and presently. The BLM would then apply the prudent man and marketability tests to determine validity.

---

[18] *1 American Law of Mining, Second Edition*, § 30.05[6], p. 30-16.
[19] *Supra.*
[20] United States v. Webb, 132 IBLA 152, 183 (1995).
[21] 30 U.S.C. § 611.

Alternatively and sometimes simultaneously, the producer would claim his minerals were an uncommon variety that could still be located. The courts developed a five-step test for defining uncommon varieties[22]:

> ". . . . the Secretary, ...has defined guidelines for distinguishing between common varieties and uncommon varieties of building stone. The guidelines, as we discern them, are (1) there must be a comparison of the mineral deposit in question with other deposits of such minerals generally; (2) the mineral deposit in question must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market place."

BLM, crushed stone producers and the federal courts wrestled with the prudent man, the marketability and the uncommon varieties tests throughout Maricopa County and parts of adjoining Pinal County. The complexity of the issues caused many of the cases to carry on for years, sometimes stretching into decades.

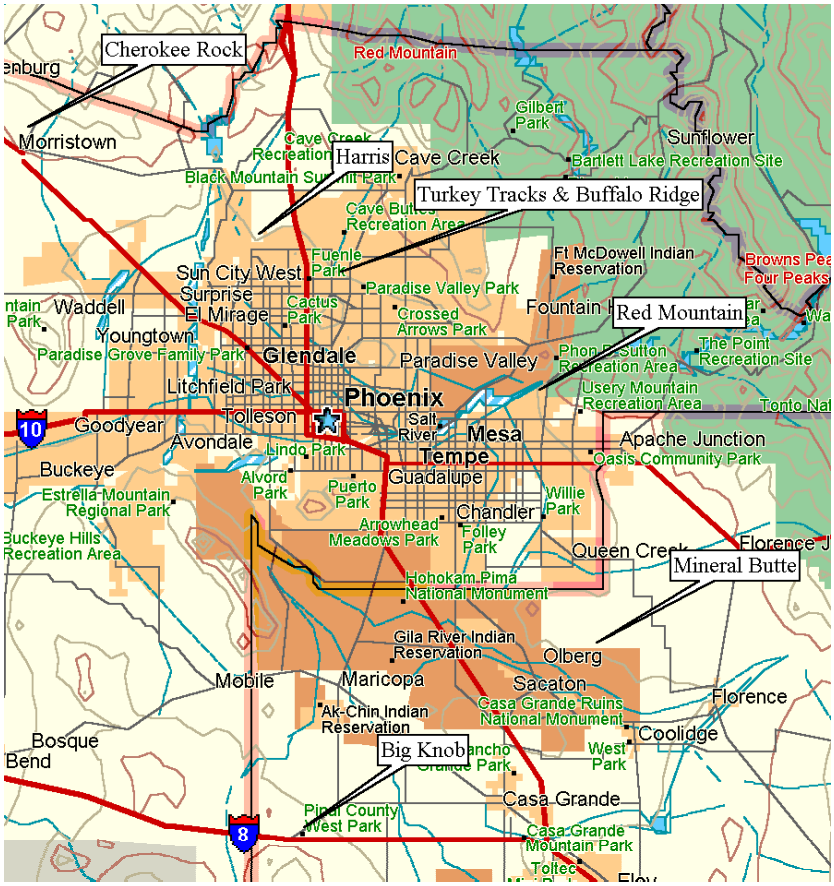
Proving or disproving valid discovery prior to 1955 or testing an uncommon variety of mineral is a challenging test for a private litigant or federal agency. The attempt attracts battling attorneys, mining engineers, geologists, economists and neighborhood groups. As the following cases show, neither BLM nor the crushed stone industry can be certain of the outcome in such complex litigation.

[22] McClarty v. Secretary of the Interior, 404 F2d 907, 908 (9th Cir. 1969).

V. Case Histories

BLM divides the State of Arizona into areas called Field Offices. The Phoenix Field Office (PFO), or its predecessors, had jurisdiction over the cases discussed herein. Seven cases exemplify the BLM – crushed stone industry disputes over mineral materials in central Arizona. They are described in order of production commencing: (1) Buffalo Ridge, (2) Turkey Tracks, (3) Red Mountain, (4) Harris, (5) Big Knob, (6) Mineral Butte, and (7) Cherokee Rock.

Central Arizona Mineral Material Disputes



The author participated as counsel, either directly or indirectly and on various sides, in all of the cited cases.

The United States Department of the Interior (DOI) has full responsibility to manage the public lands, including mineral lands, and it has broad authority to issue regulations concerning them.[23] DOI's rules and regulations, if reasonable and not inconsistent with valid law, have the force and effect of law [24] and are noticed

[23] Best v. Humboldt Placer Mining Co., 371 US 334 (1963).
[24] US v. Nelson, 199 F 474.

judicially.[25] The Secretary of the Interior fulfills a judicial role with regard to the public lands [26]:

> "The Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States . . . . The statutes in placing the whole business of the Department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul or affirm all proceedings in the Department. . . . by direct orders or by review on appeals."

BLM may, at any time on its own initiative, question the character of the land in a mining location or question the uses to which such land is being put, subject to due process of law.[27]

Determination of the validity of a mining claim is either a question of law or a question of fact. BLM makes administrative decisions on questions of law where the issue is questions of record such as land status at time of location. Contest actions involving administrative hearings are held only where questions of fact, such as mineral discovery, must be resolved. Mineral contest and appeals procedures are found in Title 43 of the Code of Federal Regulations.[28]

BLM initiates a potential challenge to mining claims by conducting a validity examination. A validity examination investigates all aspects of the mining claims, including the existence or non-existence of mineral discovery. If the validity examination confirms mineral discovery and other aspects of the mining claims, BLM allows the claims to continue. A determination that discovery does not exist results in BLM challenging the mining claims.

BLM can challenge mining claims administratively within the United States Department of the Interior or through litigation in the federal courts, but not both simultaneously.[29] The cases cited involve all of these methods: administrative action, litigation and a combination of the two.

BLM challenges include notices of mineral trespass, which can involve the Mining Law of 1872, the Materials Act of 1947, the Common Varieties Act of 1955, the Building Stone Act of 1892[30], other parts of a mining claim's validity or a combination of all of them. Litigation initiated by BLM can involve the same issues and usually include temporary restraining orders and preliminary injunctions requesting immediate termination of the mining operations.

---

[25] Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 US 301 (1903).
[26] Knight v. United States Land Association, 142 US 161, 178 (1891).
[27] Best, supra at 336.
[28] 43 C.F.R. Subpart A, Subpart E.
[29] *2 American Law of Mining, Second Edition,* § 50.02; p. 50-5.
[30] 30 U.S.C. § 161.

A. Buffalo Ridge

Buffalo Ridge is the only case cited here in which the mine owners proved that their minerals were locatable. The claims were located in Section 27, Township 4 North, Range 3 East ("T. 4 N., R. 3 E."), Gila and Salt River Baseline and Meridian ("G.&S.R.B.&M."), Maricopa County, in the early 1950s and operations continue to the present. Buffalo Ridge is situated south of the intersection of Beardsley Road and 20th Street within the City of Phoenix. The mining operation and its decomposed granite product are readily accessible to trucks hauling to various fill, rip rap and sub base projects.

Operations progressed at Buffalo Ridge until the owners filed a mineral patent application [31] on March 6, 1974.[32] The application was rejected by BLM on October 27, 1980 and the rejection was appealed[33] by the owners. The remand on appeal resulted in a settlement agreement between the owners and BLM. Settlement included issuance of patent [34], based on pre-1955 location and production, on part of the mining claims. Operations continue today on the patented land.

B. Turkey Tracks

The Turkey Track mining claims were located in Section 22, T. 4 N., R. 3 E., G.&S.R.B.&M., Maricopa County. The site was immediately north of the intersection of Beardsley Road and 20th Street, within the limits of the City of Phoenix. The claims encompassed approximately 200 acres. The Turkey Track granite was principally used for fill, rip rap and sub base.

These 200 acres produced an incredible history of administrative proceedings and federal and state court litigation. Mining operations allegedly began in the late 1940s and extended through the early 1990s. The earliest claims were located in the 1950s, prior to the Common Varieties Act[35]. The first BLM decision occurred on September 12, 1956[36]. The final federal court litigation commenced on August 16, 1991[37] and permanently halted any mining operations on the property. Through the years the operators' futilely alleged every conceivable argument in defense of the claims: pre-1955 discovery, uncommon varieties, adverse possession[38] and metalliferous minerals discovery.

The half-century history of the Turkey Track claims included at least 30 separate BLM actions, instigated either by BLM or the operator. Those agency actions included mineral contests, mineral reports, formal decisions, settlement agreements and mineral

[31] 30 U.S.C. § 22 and 29.
[32] PFO A 7967.
[33] Frank Melluzzo, 71 IBLA 178 (March 10, 1983).
[34] BLM Arizona State Office Patent No. 02-88-0001.
[35] Supra.
[36] PFO Contest A-10009.
[37] United States of America vs. Patsy A. Brings, et al., CIV 91-1332-PHX-PGR (D. Arizona)
[38] 30 U.S.C. § 38.

patent applications. The claims were also directly at issue in six federal court, three state court and two bankruptcy proceedings.

C. Red Mountain

Red Mountain Mining Company, or its predecessors, (Red Mountain) started producing landscaping material from mining claims in 1971. The mining claims were located on December 11, 1961. This case was the largest volume BLM mineral trespass in the United States until recently surpassed by a State of Nevada case.[39]

The mining claims were located in the S½S½ of Section 24, Township 2 North, Range 6 East, Gila & Salt River Baseline & Meridian, Maricopa County. The operation's proximity to Power Road and the Superstition Freeway, inside the City of Mesa limits, gave it easy access to the Phoenix metropolitan area.

Red Mountain's operation immediately came to the attention of BLM. Although BLM quickly concluded Red Mountain's minerals were saleable and not locatable, Red Mountain continued to operate under the auspices of its mining claims without interference until the first notice of trespass was issued on September 9, 1983.

The trespass notice precipitated a lengthy and convoluted series of maneuvers by Red Mountain and BLM. New placer mining claims were located over the old lode mining claims late in 1983. Then, 1984 saw a mineral patent application [40], a BLM decision voiding the placers, location of a second set of placer claims, including allegations of adverse possession, and a second trespass notice [41]. 1985 included an administrative appeal affirming the void decision [42] and a second BLM decision voiding the second placer claims. Discussions and negotiations continued for years. Generally, Red Mountain asserted the special and unique qualities of its materials, claiming they were an uncommon variety and locatable under the Common Varieties Act.

BLM completed a validity examination on February 18, 1992, which confirmed the original BLM opinion: Red Mountain was mining and processing a saleable material, and the company did not have mineral discovery on its mining claims. Red Mountain finally acceded to BLM's demands and entered into a settlement agreement in November, 1993. Red Mountain continues in operation today under a series of mineral material sales contracts issued pursuant to the agreement. The contracts include payments to BLM for both ongoing production and production considered to have been in trespass. Payments also include interest on the trespass value.

[39] Robert L. Mendenhall, 127 IBLA 73 (1993).
[40] PFO Mineral Patent Application A-19094.
[41] PFO Number AZ 020-4-296.
[42] Red Mountain Mining Co., et al, 85 IBLA 23 (1985).

D. Harris

The Harris case differs from the others in that the land at issue is split-estate; the operator owns the surface estate and the United States, through BLM, owns the mineral estate. Harris Granite Company (Harris) initiated operations in 1986 on Lot 3, Section 31, T. 5 N., R. 2 E., G.&S.R.B.&M., Maricopa County. Mining claims were located over the federal mineral estate. The land is near 67th Avenue and Jomax Road, City of Peoria.

On July 24, 1986 Harris entered into a mineral material sales contract with the BLM [43] for the sale of 72,000 tons of granite from the land at $.54 per ton. Payments were made on the contract through early 1987. Through the course of the next eight years operations continued sporadically, payments to BLM quickly ceased, BLM issued several trespass notices and the parties negotiated or entered into two separate settlement agreements. The situation was not resolved until BLM sued Harris in federal district court in 1995.[44] Operations permanently ceased and BLM obtained a monetary judgment against Harris, which was eventually paid off.

E. Big Knob

Big Knob Mining, Inc. (Big Knob) commenced operations on mining claims in 1986 on Section 1, T. 7 S., R. 2 E., G.&S.R.B.&M., Pinal County. The site was close to Arizona State Highways 84 and 347 and U.S. Interstate 8, approximately 20 miles west of the city limits of Casa Grande.

Big Knob excavated and processed colored granite for landscaping material. This land is also split-estate. The State of Arizona owns the surface while the United States owns the mineral estate. The state did not object to the operation and neither did the rancher-lessee once agreement was reached to protect certain ranch improvements.

However, BLM reacted quickly. The agency proceeded against Big Knob in United States district court [45] early in 1987. As did other producers, Big Knob claimed its granite was an uncommon variety while BLM asserted it was a common variety and subject to the Materials Act[46]. The Honorable Roger G. Strand denied the government's request for a preliminary injunction by deciding the granite was a common variety but the balance of hardships did not favor the United States in an order dated May 23, 1987.

A notice of trespass was then sent to Big Knob on July 23, 1987.[47] The parties resolved their differences by entering into a settlement agreement on October 16, 1989. The agreement provided for Big Knob's continued operations and payment of both a trespass and ongoing production amount. The trespass amount was paid off and operations continue under a series of mineral material sales contracts.

---

[43] PFO Number AZA-22276.
[44] United States of America v. Jerry D. Harris, et al, CIV-95-1181-PHX-RGS (D. Arizona).
[45] United States of America vs. Big Knob Mining, Inc., et al, CIV 87-607 PHX RGS (D. Arizona).
[46] supra.
[47] PFO Number A – 22929.

F. Mineral Butte

The Mineral Butte mining claims were located, probably for their copper potential, in May of 1955 in the S½ of Section 36, T. 3 S., R. 7 E., G.&S.R.B.&M., Pinal County. The claims were situated approximately 10 miles west of the Hunt Highway (State Highway 87), between the cities of Mesa and Florence.

A notice of intent to mine gold was filed with BLM on August 8, 1985. Operations started, and BLM quickly concluded the principal product was crushed granite for use as landscaping material. BLM estimated the operator had removed and/or stockpiled granite material worth $2,700,000.00 when the agency initiated its enforcement actions.

BLM sued the operator in federal court. The complaint was filed August 29, 1986, and temporary orders halting the mining operations were issued.[48] The temporary orders and later injunction halted mining operations.

The operator simultaneously claimed it was mining for metalliferous minerals and the granite was a by-product, the granite was an uncommon variety and a pre-1955 market existed for the granite. Neither BLM nor the Honorable Paul G. Rosenblatt agreed with those contentions.

BLM then administratively challenged the validity of the mining claims[49]. The administrative contest was dismissed by agreement of BLM and the claims' owners on May 3, 1989. The agreement was reached as a result of a pending land exchange and included permanent cessation of mining operations.

G. Cherokee Rock

Cherokee Rock is the final and most sophisticated BLM enforcement action cited in this article. The operator's claims to legitimacy were probably the most precarious.

The mining claims were located in the early and middle 1980s in the SE¼NW¼ and the W½SW¼NE¼ of Section 5, T. 6 N., R. 3 W., G.&S.R.B.&M., Maricopa County. The site was located on split-estate land immediately north of the intersection of State Highways 74 and 60. It provided easy access to the Phoenix metropolitan area. The State of Arizona owns the surface and the United States owns the mineral estate.

ASLD approved a plan of operations on April 2, 1990.[50] BLM allowed two small mineral materials sales contracts[51] through the remainder of 1990. Partial payments were made on the contracts.

---

[48] United States vs. Floyd R. Bleak, et al, CIV86-1434 PHX PGR (D. Arizona).
[49] United States vs. Irma I. Rodney, et al, PFO Contest Number A 22096.
[50] ASLD Plan # 23-97485.
[51] PFO AZA 24547.

A series of non-compliance letters, meetings and other forms of negotiations then occurred between BLM and the operator, stretching into 1992. The operator alleged that its minerals were an uncommon variety and therefore locatable. A trespass notice was issued by BLM on February 21, 1992 and the surface plan expired on April 1, 1992.

The operator and BLM could not resolve their differences on whether the minerals were saleable or locatable, and BLM initiated litigation.[52] On March 12, 1993 the United States sought and received a Prejudgment Writ of Entry, Attachment and Sequestration against three corporate and nine individual defendants. The Writ attached all property and income from property in which the defendants had a substantial non-exempt interest. It was a heavy blow against the individuals and companies operating the Cherokee Rock site, a blow that permanently halted operations. This was the first time the 1990 Federal Debt Collection Procedures Act [53] was used against a mineral trespass. The Harris case was the second such action, and the Red Mountain case would have been third but for the pre-litigation settlement.

The litigation was resolved but the mining claims still exist. In November of 1994, a series of stipulated settlements were executed that provided for the payment of $126,000.00 to BLM. The stipulated payments have not been completed and negotiations over collection continue to date. Some of the individual defendants paid BLM lesser sums before their assets were released.

[52] United States v. Sunwalker Development, et al, CIV No. 930484-PHX-RGS (D. Arizona).
[53] 28 U.S.C. § 3001, et seq.

VI. Conclusion

BLM's last major trespass action in the Phoenix metropolitan area occurred seven years ago. Since the Cherokee Rock litigation, several factors have encouraged producers to quietly buy their source mineral material as a saleable mineral rather than assert the locatable argument. PFO is currently managing nine mineral material sales contracts.

A major factor is the cost in time and money of litigating with the United States government in a situation similar to that in which the Cherokee Rock operators found themselves. The potential costs and rewards of litigation must be weighed when BLM generally sells mineral materials for little more than a dollar per ton.[54] Penciling through the pros and cons of litigation leads one to the conclusion obviously reached by most of the crushed stone industry using BLM lands: it is less expensive and safer to simply buy the mineral material from BLM.

Michael A. Johns, the United States Government's trial attorney [55] in these cases, offered the following comment:

> "Your conclusions from these events are correct. Several of these trespass cases involved lands set aside for parks, subject to valid existing rights. In each of these cases, the producers would have been well advised to purchase the material or move their operations, rather than litigate. My first contact with mining was on our family's gold placer claim in the Agua Fria River just below Rock Springs where I panned considerable 'color' as a boy. Like most public land litigation, mining cases present a fascinating look at American history, sociology, politics, economics and law. The tenacity of some miners is illuminated in a passage from United States v. Northern Pacific Ry. Co., 1 F.2d 53, 57 (D. Montana 1924), where the Court noted: 'It is human experience that a claim, once made and esteemed as a property of hope, is often after a fashion clung to when all persons, but the owner reluctant to abandon, can perceive nothing to justify.' The crushed rock industry has continued to thrive while complying with BLM's requirements. BLM's challenge is to ensure viable sources of material for this vibrant industry to meet the demands of our growing population."

After Cherokee Rock, BLM reconsidered its strategy regarding mineral material sales and initiated a planning element. One result of the reconsideration was development of mineral material guidelines for the Phoenix metropolitan area.[56] The guidelines were designed to resolve seven issues, issues that originated in the half-century of conflict described herein:

> 1) meeting public demand for sales through existing program procedures, 2) meeting public demand for free use through program guidelines, 3) addressing

[54] PFO Arizona Statewide Mineral Commodity Market Study and Analysis, 1998.
[55] First Assistant U.S. Attorney Michael A. Johns: This comment is Mr. Johns' personal comment and not an official statement of the U.S. Department of Justice.
[56] PFO Metropolitan Phoenix Mineral Materials Program Guidelines, November, 1994.

concerns of nearby residents, 4) resolving conflicting resource uses, 5) maximizing interagency coordination, 6) reducing unauthorized use, and 7) improving production verification.[57]

Some elements within BLM have attempted to initiate a mineral materials resources study for the metropolitan Phoenix area. However, this effort has not been funded.

Paul Buff, BLM Senior Mineral Specialist, presented the following further observations:

> "Many of the people, illegally removing the material, viewed their mining claims as property from which they could remove what they wished, in spite of almost 50 years of laws and legal decisions to the contrary. The law could be misinterpreted and/or misrepresented by claimants, promoters and unscrupulous lawyers to mean that sand and gravel or crushed granite could be mined from a claim legally. Some investors and miners were sold a bill of goods by these people and had no way to recoup their losses other than to mine in trespass. Some miners, eager to garner riches and get into the market, listened to what they wanted to hear and failed to perform due diligence. Some miners misinterpreted answers given by government employees. The view that you could mine your claim for common variety minerals was eventually changed by the efforts of a small handful of government employees and scrupulous private attorneys."

Another event impacting the crushed stone industry occurred recently when BLM proposed new regulations for the sale of mineral materials.[58] The proposed regulations corrected many of the deficiencies in the current regulations that the industry found objectionable. BLM proposes to amend its mineral materials regulations by adding or amending provisions on the inspection of operations, production verification, contract renewal, procedures for cancellation, bonding, and appeals. The proposed rule also addresses the rights of purchasers and permittees versus subsequent users of the same land.

The history of litigation and modernization of the federal regulations maps the future for crushed stone producers from BLM lands in central Arizona. Contravening BLM's classification of crushed stone sources as saleable is fraught with risks and heavy costs.

[57] Id., page 1.
[58] Federal Register 65, no. 179 (September 14, 2000): 55863-55880.

VII. Appendices
A. Maricopa County and State of Arizona Population Growth

Year	Maricopa County Population	Arizona Population
1966	870,000	1,614,000
1967	890,000	1,646,000
1968	914,000	1,682,000
1969	946,000	1,737,000
1970	971,228	1,775,399
1971	1,026,000	1,896,000
1972	1,087,200	2,009,000
1973	1,156,700	2,125,000
1974	1,217,400	2,224,000
1975	1,253,900	2,286,000
1976	1,280,000	2,348,000
1977	1,329,800	2,427,000
1978	1,388,900	2,518,000
1979	1,456,800	2,639,000
1980	1,509,175	2,716,546
1981	1,530,700	2,760,400
1982	1,582,100	2,833,100
1983	1,612,100	2,880,100
1984	1,701,300	3,014,600
1985	1,837,956	3,181,400
1986	1,903,900	3,302,300
1987	1,998,700	3,452,600
1988	2,055,400	3,551,500
1989	2,166,500	3,654,700
1990	2,122,101	3,665,228
1991	2,179,975	3,767,000
1992	2,233,700	3,858,825
1993	2,291,200	3,958,875
1994	2,355,900	4,071,650
1995	2,551,765	4,307,150
1996	2,634,625	4,462,300
1997	2,740,975	4,628,500
1998	2,845,000	4,801,400
1999	2,968,025	4,980,275
2000	3,096,625	5,168,950

59

[59] *Arizona Yearbook: A Guide to Government in the Grand Canyon State 1997-1998. Department of Economic Security, 1997-2000.*

B. Crushed Stone Production

Year	Crushed Stone – Short Tons	Value -Dollars	Unit Value – Dollars Per Ton
1966	2,271,000	4,091,000	1.80
1967	1,910,000	3,491,000	1.83
1968	3,293,000	6,239,000	1.89
1969	2,827,000	5,812,000	2.06
1970	3,511,000	7,094,000	2.02
1971	2,873,000	5,848,000	2.04
1972	4,688,000	6,018,000	1.71
1973	4,265,000	9,469,000	2.22
1974	4,932,000	11,479,000	2.33
1975	3,404,000	11,030,000	3.24
1976	4,147,000	13,921,000	3.36
1977	5,329,000	16,367,000	3.07
1978	5,306,000	17,689,000	3.33
1979	5,769,000	21,401,000	3.71
1980	6,205,000	24,780,000	3.99
1981	6,315,000	26,263,000	4.16
1982	5,200,000	22,200,000	4.27
1983	4,775,000	24,079,000	5.04
1984	5,200,000	27,300,000	5.25
1985	5,929,000	23,111,000	3.90
1986	5,600,000	25,100,000	4.48
1987	7,712,000	33,999,000	4.41
1988	7,408,000	33,000,000	4.46
1989	6,649,000	28,552,000	4.29
1990	5,300,000	13,500,000	2.55
1991	7,060,000	32,842,000	4.65
1992	5,500,000	26,300,000	4.78
1993	7,088,000	36,823,000	5.20
1994	5,478,000	25,000,000	4.56
1995	6,084,000	32,600,000	5.36
1996	7,495,000	40,600,000	5.42
1997	8,256,000	44,000,000	5.33
1998	8,906,000	44,800,000	5.03
1999	9,931,000	54,100,000	5.45
2000	10,141,000	56,600,000	5.48

60

[60] Arizona Department of Mines and Mineral Resources.